

00001572.WPD

KAWASHIMA LORUSSO & TOM LLP

JAMES KAWASHIMA #1145-0
RANDALL Y. YAMAMOTO #3274-0
CARTER K. SIU #7313-0
Topa Financial Center
Suite 500, Fort Street Tower
745 Fort Street
Honolulu, Hawaii 96813
Telephone: (808)275-0371
Facsimile: (808)275-0399
Email Address: ryamamoto@kltlaw.com

Attorneys for Defendants
CITY AND COUNTY OF HONOLULU, HONOLULU
LIQUOR COMMISSION, DENNIS ENOMOTO,
WALLACE W. WEATHERWAX, JOHN CARROLL,
ANNA HIRAI, AND ALLAN GAYLORD

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

KERRY SHANNON,	) CIVIL NO. CV04-00086 SPK/LEK
)
Plaintiff,	) DEFENDANTS CITY AND COUNTY OF
	) HONOLULU, HONOLULU LIQUOR
vs.	) COMMISSION, DENNIS ENOMOTO,
	) WALLACE W. WEATHERWAX, JOHN
CITY AND COUNTY OF HONOLULU;	) CARROLL, ANNA HIRAI, AND ALLAN
HONOLULU LIQUOR COMMISSION;	) GAYLORD'S MOTION TO DISMISS OR
DENNIS ENOMOTO; in his official	) IN THE ALTERNATIVE FOR SUMMARY
capacity as chairman of the	) JUDGMENT; MEMORANDUM IN
Honolulu Liquor Commission;	) SUPPORT; LOCAL RULE 7.5(e)
WALLACE W. WEATHERWAX,	) CERTIFICATION; CERTIFICATE OF
individually and in his	) SERVICE
capacity as an agent and)
employee of the Honolulu Liquor)
Commission; JOHN CARROLL,)
individually and in his)
capacity as an employee of the)
Honolulu Liquor Commission;)
ANNA HIRAI, individually and in)
her capacity as an employee of)
the Honolulu Liquor Commission;)
ALLAN GAYLORD, individually and)
in his capacity as an employee)
of the Honolulu Liquor)
Commission; JOHN DOES 1-10,	) Trial Date: May 22, 2007
)

JANE DOES 1-10; DOE)
CORPORATIONS)
1-10; DOE PARTNERSHIPS 1-10;)
DOE GOVERNMENTAL AGENCIES 1-10,)
)
Defendants.)
_____)

**DEFENDANTS CITY AND COUNTY OF HONOLULU, HONOLULU
LIQUOR COMMISSION, DENNIS ENOMOTO, WALLACE W. WEATHERWAX,
JOHN CARROLL, ANNA HIRAI, AND ALLAN GAYLORD'S MOTION
TO DISMISS, OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

Come now Defendants CITY AND COUNTY OF HONOLULU,
HONOLULU LIQUOR COMMISSION, DENNIS ENOMOTO, in his official
capacity as chairman of the Honolulu Liquor Commission, WALLACE
W. WEATHERWAX, individually and in his capacity as an agent and
employee of the Honolulu Liquor Commission, JOHN CARROLL,
individually and in his capacity as an employee of the Honolulu
Liquor Commission, ANNA HIRAI, individually and in her capacity
as an employee of the Honolulu Liquor Commission, and ALLAN
GAYLORD, individually and in his capacity as an employee of the
Honolulu Liquor Commission, by and through their attorneys,
KAWASHIMA LORUSSO & TOM, LLP, and hereby move this Honorable
Court for an order granting dismissal, or in the alternative, for
summary judgment, on all Counts set forth in Plaintiff's
Complaint filed herein on February 5, 2004, for the following
reasons.

1. As to Wallace W. Weatherwax, John Carroll, Anna
Hirai, and Allan Gaylord in their individual capacities, the

Complaint should be dismissed on the basis of their qualified immunity under Federal and State law;

2. As to the City & County of Honolulu, Honolulu Liquor Commission, and Dennis Enomoto, Count I of the Complaint must be dismissed as Plaintiff has not alleged that his constitutional rights were violated because of an official City policy or custom, and there is no evidence of such;

3. In addition, Count I should also be dismissed because Plaintiff's Grand Jury testimony was made pursuant to his official duties as a public servant and law enforcement official for the Honolulu Liquor Commission and was therefore not protected by the First Amendment; nor is there evidence that any alleged retaliation or adverse employment action was taken against Plaintiff for his participation in the Federal Bureau of Investigation's and Honolulu Police Department's investigations into alleged corruption at the Honolulu Liquor Commission, including testifying before the Grand Jury;

4. Count II should be dismissed as to all Defendants because there is no evidence that Plaintiff was ever retaliated against by any Defendants with regard to his compensation, terms, conditions, location, or privileges of employment as required by § 378-62, Hawaii Revised Statutes ("HRS");

5. Plaintiff's negligent supervision claim (Count III) must be dismissed for two (2) reasons: (1) to the extent

that it is alleged against his employer, the claim is barred by the workers' compensation exclusivity statute, and (2) to the extent that the Complaint alleges liability against the employees of the Honolulu Liquor Commission for their actions within the scope of their employment, it must be dismissed as a negligent supervision claim must be premised on actions outside the scope of their employment [Dairy Road Partners v. Island Insurance Company, Ltd., 92 Hawaii 398, 992 P.2d 93 (2000)];

6. Count IV should be dismissed as there is no evidence of any conspiracy to retaliate against Plaintiff;

7. Plaintiff's wrongful discharge claim (Count V) should be dismissed because the claim is embodied in Count I and Count II of the Complaint, [See Ross v. Stouffer Hotel Company (Hawaii), Ltd., 76 Hawaii 454, 879 P.2d 1037 (1994)];

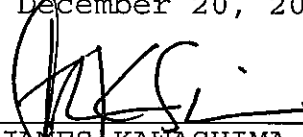
8. Count VI, which is a claim of intentional infliction of emotional distress, should be dismissed because there is no evidence that Defendants were responsible for any of the allegations including the death threats and other anonymous activity alleged by Plaintiffs, and whatever Defendants were alleged to have done, would not have and did not cause Plaintiff severe emotional distress; and,

Count VII must be dismissed as the City and County of Honolulu and the Honolulu Liquor Commission (including Dennis Enomoto) because punitive damages cannot be awarded against a

municipality; in addition, there is no evidence of retaliation and therefore punitive damages are unwarranted against Wallace Weatherwax, Anna Hirai, John Carroll, and Allan Gaylord.

This motion is made pursuant to Rules 7, 12 and 56 of the Federal Rules of Civil Procedure and Rule 7 of the Local Rules of Practice for the United States District Court for the District of Hawaii, and is based upon the attached memorandum in support of motion, the separate and concise statement of facts and exhibits attached thereto (filed contemporaneously with the foregoing Motion), and the record and files herein.

DATED: Honolulu, Hawaii, December 20, 2006.



JAMES KAWASHIMA
RANDALL Y. YAMAMOTO
CARTER K. SIU
Attorneys for Defendants
CITY AND COUNTY OF HONOLULU,
HONOLULU LIQUOR COMMISSION,
DENNIS ENOMOTO, WALLACE W.
WEATHERWAX, JOHN CARROLL,
ANNA HIRAI AND ALLAN GAYLORD